Country Ford Trucks, Inc. *and* Machinists District Lodge 190, Local 1528, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 32–CA–17664–1

November 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on September 2, 1999, the General Counsel of the National Labor Relations Board issued a complaint on September 8, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32–RC–4617. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 19, 1999, the General Counsel filed a Motion for Summary Judgment, and the Charging Party filed a Joinder in Motion for Summary Judgment. On October 20, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed responses, and the Charging Party filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. The Respondent also admits its refusal to furnish the information requested by the Union, but asserts that it is not required to supply the requested information because that information is not relevant and necessary for collective bargaining. In this regard, the Respondent argues that the Union failed to limit its August 13, 1999 information request to unit employees; that the Union failed to explain the relevance and necessity of each item of the requested information; that the Union failed to offer to reimburse the Respondent for its time and costs in gathering and copying the requested information; and that the request is overbroad in seeking data on certain subjects for the past 3 years. In addition, the Respondent asserts that the Union made the information request in bad faith.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

We also find that the Respondent has not raised any issue requiring a hearing with respect to the Union's request for information. Although the Union's August 13, 1999 request for information was not specifically limited to unit employees, the complaint is so limited, and the Union's subsequent letter to the Respondent on September 28, 1999, also so limits the request. In addition, the Union's September 28 letter limited the data it was requesting to a 1-year period. Further, it is well established that, with the exception of employee social security numbers,[4] the compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request.[5] The Respondent has failed to rebut this presumption. We therefore find that no material issues of fact exist concerning the Respondent's refusal to furnish the information sought by the Union.[6] Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

[4] The Board has held that employee social security numbers are not presumptively relevant and that the union must therefore demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996). Here, the Union did not specify in its request why it wanted such information or otherwise demonstate the relevance of the information. This does not excuse, however, the Respondent's failure to provide all the other information requested by the Union. Id.

[5] See, e.g., *Grand River Village,* 327 NLRB No. 120 (1999) (not reported in Board volumes), and cases cited therein.

[6] The cost of compliance with the Union's request did not justify the Respondent's refusal to supply relevant information. *Hospital Episcopal San Lucas,* 319 NLRB 54, 57 (1995). As the Board stated in *Food Employer Council*, 197 NLRB 651 (1972), "If there are substantial costs involved in compiling the information in the precise form and at the intervals requested by the Union, the parties must bargain in good faith as to who shall bear such costs, and, if no agreement can be reached, the Union is entitled in any event to access to records from which it can reasonably compile the information. If any dispute arises in applying these guidelines, it will be treated at the compliance stage of these proceedings."

Finally, the Respondent's contention that the Union made the information request in bad faith does not raise an issue warranting a hearing. The requirement that an information request be made in good faith is satisfied if at least one reason for the demand can be justified. *Island Creek Coal Co*., 292 NLRB 480, 489 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990). Here, as discussed above, the newly certified Union sought information that is presumptively relevant for purposes of collective bargaining and, accordingly, we find that the good-faith requirement is met.

Member Hurtgen would deny summary judgment with respect to the allegation concerning a refusal to furnish information. He would allow the Respondent to show that the Union's demand was motivated, in substantial part, by bad-faith reasons. He does not necessarily agree with his colleagues that the Union's demand was to be honored if only one of the Union's reasons was in good faith.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, has been engaged in the sales and service of new and used trucks at its facility in Ceres, California. During the 12 months preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 and during the same period of time, purchased and received goods valued in excess of $5000, which originated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 13, 1999, the Union was certified on July 29, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time service technicians and lubricators employed by Respondent at its Ceres, California location; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since August 13, 1999, the Union has requested the Respondent to bargain and to furnish information, and, since August 31, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 31, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of the employees' social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Country Ford Trucks, Inc., Ceres, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Machinists District Lodge 190, Local 1528, International Association of Machinist and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time service technicians and lubricators employed by Respondent at its Ceres, California location; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) With the exception of employee social security numbers, furnish to the Union in a timely fashion the information it requested in its letters of August 13 and September 28, 1999, which information is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Within 14 days after service by the Region, post at its facility in Ceres, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and main-

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Machinist District Lodge 190, Local 1528, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time service technicians and lubricators employed by us at our Ceres, California location; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, with the exception of employee social security numbers, furnish to the Union in a timely fashion the information it requested in its letters of August 13 and September 28, 1999, which information is necessary and relevant to its role as the exclusive representative of the unit employees.

COUNTRY FORD TRUCKS, INC.